



## INTERIOR BOARD OF INDIAN APPEALS

Estate of Adeline Andrews White

6 IBIA 94 (06/01/1977)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

## ESTATE OF ADELINE ANDREWS WHITE

IBIA 77-27

Decided June 1, 1977

Appeal from an order denying petition for rehearing.

Affirmed.

1. Indian Probate: Rehearing: Pleading, Timely Filing

In computing the time for filing a petition for rehearing, where the last day of the 60-day period so computed falls on a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, it is not to be included.

2. Indian Probate: Rehearing: Generally

A petition for rehearing which is based upon newly discovered evidence will be denied where it is not supported by justifiable reasons for failure to discover and present that evidence, rendered as new, at the hearing held prior to the issuance of the decision.

3. Indian Probate: Rehearing: Generally

A petition for rehearing which is based upon newly discovered evidence will be denied where it is not accompanied by affidavits of witnesses stating fully what the new testimony is to be.

APPEARANCES: Rupert J. Davis, pro se; Jeffrey Howe, Esq., for the Estate of Theodore White.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

Decedent, Adeline Andrews White, an unallotted Nez Perce Indian, died intestate on July 5, 1975, owning trust property in the States of Idaho and Washington.

A hearing was held by Administrative Law Judge Robert C. Snashall, on March 25, 1976, at Lapwai, Idaho, and an Order Determining Heirs was issued on May 4, 1976. Among other things, Judge Snashall determined that the decedent and Theodore White were married in Idaho in 1945 by virtue of Indian custom recognized by the Nez Perce Tribe. He further determined Theodore White to be the sole heir of decedent's Idaho property and heir of three-fourths of decedent's Washington property. The heirs to the remaining one-fourth interest in the Washington property were found to be--

Millie Andrews - Niece - 1/12  
Rupert J. Davis - Nephew - 1/12  
Noreen S. Allen - Gr/Niece - 1/72  
Wesley Clifford Allen - Gr/Nephew - 1/72  
Viola A. Allen - Gr/Niece - 1/72  
Phillip G. Allen, Jr. - Gr/Nephew - 1/72  
Vivian N. Allen - Gr/Niece - 1/72  
Nelson Ralph Allen - Gr/Nephew - 1/72

Persons aggrieved by the Order Determining Heirs had 60 days from the date of mailing of same, in this case May 4, 1976, within which to file a petition for rehearing. See 43 CFR 4.241.

Appellant filed a petition for rehearing on July 6, 1976, wherein he challenged the finding that Theodore White was the husband of the decedent at the time of her death. He asserts that he could produce evidence that decedent was divorced from Theodore White by Indian custom.

Judge Snashall recognizing that the petition did not comply with the requirements of Section 4.241 of departmental regulations, advised the petitioner on July 13, 1976, that there was nothing in the petition (motion) as then constituted to support his contention. The Judge also advised, for an Indian-custom divorce to be recognized, petitioner must establish that it took place prior to March 6, 1963. See P.L. 280; Idaho Code § 67-5101-5103 (1973). He further indicated he would take no action on the petition until August 6, 1976, in order to give petitioner ample opportunity to show cause why the petition should not be denied. In a final gesture of cooperation, the Judge, in the final sentence of the letter admonished petitioner to examine the applicable regulation, particularly Section 4.241.

The appellant responded on September 30, 1976, with a "Petition In Opposition Of Memorandum Opposing Motion For Rehearing." The petition again did not conform with Section 4.241 of regulations referred to, supra. The petition was not under oath; it was not accompanied by affidavits of witnesses stating fully what the new testimony was to be; nor did petitioner state therein what he considered to be justifiable reasons for failure to discover and present that evidence, tendered as new, at the hearing held prior to the issuance of the order Determining Heirs of May 4, 1976.

The petition for rehearing was denied on November 29, 1976, as being untimely filed on the sixty-first (61) day. As dicta Judge Snashall noted that the petition for rehearing was not accompanied by affidavits tending to support petitioner's naked assertion of the marital status of decedent.

[1] In computing the time for filing a petition for rehearing, where the last day of the 60-day period so computed falls on a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, it is not to be included. July 3, 1976, the 60th day of the period was Saturday and could not be counted. Neither Sunday, July 4, 1976, nor Monday, July 5, 1976 (a Federal legal holiday), could be counted. Hence it should not have been counted. Accordingly, the 60th day for filing purposes would be Tuesday, July 6, 1976. We therefore find that the petition was timely filed. See 43 CFR 4.22(f).

[2, 3] We find however that appellant failed to conform to the requirements of 25 CFR 4.241 in that he failed to submit affidavits of witnesses stating fully what the new testimony was to be. Nor did he state justifiable reasons for failure to disclose and present that evidence, tendered as new, at the hearing held prior to the issuance of the Order Determining Heirs issued May 4, 1976.

Appellant had ample opportunity to support his position at the hearing held on March 25, 1976. His only reason for failing to do so is that he did not arrive at the hearing until the last 2 or 3 minutes of the hearing. We do not consider this to be a justifiable reason.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Order Determining Heirs dated May 4, 1976, is AFFIRMED, and the appeal is hereby DISMISSED.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed

Mitchell J. Sabagh

Administrative Judge

I concur:

//original signed

Alexander H. Wilson

Chief Administrative Judge